

MANUAL

FOR THE USE OF

BOARDS OF HEALTH

OF

MASSACHUSETTS.

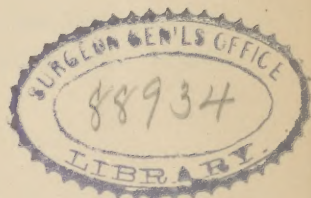
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CONTAINING

THE STATUTES RELATING TO THE PUBLIC HEALTH, AND THE
DECISIONS OF THE SUPREME JUDICIAL COURT OF MAS-
SACHUSETTS RELATING TO THE SAME (STATUTE
RELATING TO THE ADULTERATION OF FOOD
AND DRUGS INCLUDED).

PREPARED BY DIRECTION OF THE

STATE BOARD OF HEALTH, LUNACY, AND CHARITY.



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INTRODUCTION.

THIS manual, containing all the statutes relating to the subject of the public health, has been prepared by George F. Piper, counsellor-at-law and member of the Cambridge Board of Health.

Following each section will be found every decision of the Supreme Court of the State upon the subject-matter of that section.

The marginal notes refer to the chapter and section of the Public Statutes, where each section, so indicated, may be found.

The statutes impose upon boards of health the duty of protecting the people from those causes and influences which may injuriously affect their health. In the words of Judge Wells in the case of *City of Salem v. Eastern Railroad Company*, "Their action is intended to be prompt and summary. They are clothed with extraordinary powers for the protection of the community from noxious influences affecting life and health; and it is important that their proceedings should be delayed as little as possible. Delay might defeat all beneficial results; and the necessity of the case, and the importance of the public interests at stake, justify prompt action."

MANUAL.

STATE BOARD.

1. The state board of health, lunacy, and charity shall consist of nine persons. The present members thereof shall continue to hold their offices during the terms for which they were appointed. Two members of the board shall retire each year, in the order of their appointment, except every fifth year, when one shall retire. The appointments or re-appointments to fill vacancies occurring from expiration of terms of office shall be for five years; and all vacancies which may occur from that cause or otherwise shall be filled by the governor, with the advice and consent of the council.

Public Statutes,
c. 79, § 1.

The state board of health, lunacy, and charity was originally established by chap. 291, Acts of 1879.

2. The state board of health, lunacy, and charity shall take cognizance of the interests of health and life among the citizens of the commonwealth. It shall make sanitary investigations and inquiries in respect to the causes of disease, and especially of epidemics and the sources of mortality and the effects of localities, employments, conditions, and circumstances, on the public health; and shall gather such information in respect to those matters as it may deem proper for diffusion among the people. It shall advise the government in regard to the location of any public institutions.

Certain general
powers and
duties of the
state board of
health, lunacy,
and charity.
Public Statutes,
c. 80, § 1.

The state board of health was originally established by chap. 420, Acts of 1869.

Its powers were subsequently enlarged by chap. 167, Acts 1871, and chap. 183, Acts 1878.

By chap. 291, Acts 1879, it was abolished, and its powers transferred to the state board of health, lunacy, and charity.

3. If small-pox or any other contagious or infectious disease dangerous to the public health exists, or is likely to exist, in any place within the state, the state board shall investigate the same, and the means of preventing the spread thereof, and shall consult

Further duties
in case of con-
tagious diseases.
Public Statutes,
c. 80, § 2.

thereon with the local authorities, and shall have co-ordinate powers as a board of health, in every place, with the board of health or health officer thereof, or with the mayor and aldermen or the selectmen, if no such board or officer exists in such place.

TOWN AND CITY BOARDS OF HEALTH.

Towns may choose board of health, etc., or selectmen, to act.
Public Statutes, c. 80, § 8.

4. A town, respecting which no provision is made by special law for choosing a board of health, may, at its annual meeting or at a meeting legally warned for the purpose, choose a board of health by ballot, to consist of not less than three nor more than nine persons; or may choose a health officer. If no such board or officer is chosen, the selectmen shall be the board of health.

City council may appoint such board; or shall itself act.
Public Statutes, c. 80, § 4.

5. Except where different provision is made by law, the city council of a city may appoint a board of health; may constitute either branch of such council, or a joint or separate committee of their body, a board of health, either for general or special purposes; and may prescribe the manner in which the powers and duties of the board shall be exercised and carried into effect. In default of the appointment of a board with full powers, the city council shall have the powers and perform the duties prescribed to boards of health in towns.

Where, by an ordinance of a city, two members of the board of mayor and aldermen, and three members of the common council, were constituted the board of health, and no provision as to the mode of appointment was made by the ordinance, or by the joint rules and orders of the city council, but the orders of each branch provided that all committees should be appointed by the mayor and the president of the common council respectively, it was held that the members of the joint committee, constituted by the ordinance a board of health, were duly appointed by the presiding officers of each branch, and that the board so constituted and appointed was legally organized.

Taunton v. Taylor, 116 Mass. 254.

Where the city council constitutes the board of health, the power to make regulations as it judges necessary for the public health and safety respecting nuisances, sources of filth, and causes of sickness, may as well be exercised by an ordinance as by any other form of regulation.

Commonwealth v. Patch, 97 Mass. 224.

In default of the appointment of a board of health, and where the city council constitutes the board of health, an ordinance which prohibits the keeping or maintaining swine within certain districts of the city, under a penalty not exceeding twenty dollars for each offence, is valid as a health regulation.

Commonwealth v. Patch, 97 Mass. 221.

It is a matter of considerable doubt whether the prohibition of offensive trades is the proper subject of an ordinance or by-law, because that matter is specially provided for by statute, and to prohibit their exercise in any particular locality in a town or city by a by-law or ordinance would interfere with the right of appeal to a jury which the statutes secure.

Commonwealth v. Patch, 97 Mass. 223.

6. Every such board of health may appoint a physician to the board, who shall hold his office during its pleasure.

Board may appoint physician.
Public Statutes, c. 80, § 5.
Compensation of physician, etc.
Public Statutes, c. 80, § 6.

7. Such board shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of persons employed by it in the execution of the health laws and of its own regulations.

8. Present members of boards of health of cities by appointment under chapter one hundred and thirty-three of the statutes of the year eighteen hundred and seventy-seven, shall continue to hold office during the terms for which they were appointed, unless sooner removed as provided by law.

Present members of city boards of health under St. 1877, 133, to remain in office.
Public Statutes, c. 80, § 7.

9. In each city, except Boston, in which a majority of the voters shall have so voted according to law, there shall be a board of health, consisting of the city physician, and two persons, not members of the city council, appointed by the mayor and aldermen. The term of office of the appointed members shall be two years, and one of them shall retire from office on the first Monday of February in each year. If such board is not already in existence, the mayor and aldermen shall in January next after the vote of the city authorizing such board appoint two members, one for one year, and the other for two years; and the board shall enter on its duties on the first Monday of February after such appointment. All vacancies occurring in boards already in existence or in those hereafter constituted shall be filled by the mayor with the approval of the board of aldermen. Each member so appointed shall be subject to removal by the mayor for cause, and shall receive such compensation as the city council may from time to time determine.

Boards of health to be appointed in cities, when. Term of office, removal, etc.
Public Statutes, c. 80, § 8.

10. Such boards shall organize annually by the choice of one of their number as chairman; they may also choose a clerk, not a member of the board, and make such rules and regulations for their own government and for the government of all subordinate officers in their department as they may deem expedient.

how to be organized.
Public Statutes, c. 80, § 9.

11. Such boards may exercise all the powers vested in, and shall perform all the duties prescribed to, city councils or mayors and aldermen as boards of health, under the statutes and ordinances in force in their respective cities on the seventeenth day of May in the year eighteen hundred and seventy-seven; and may appoint such subordinate officers, agents, and assistants as they may deem necessary, and may fix their compensation and that of their clerk; but the whole amount of such compensation shall not exceed the sum appropriated therefor by the city council.

powers and duties.
Public Statutes, c. 80, § 10.

12. In each city such board of health shall annually, in January, present to the city council a report made up to and including the thirty-first day of the preceding December, and containing a full

to make annual reports.
Public Statutes, c. 80, § 11.

and comprehensive statement of its acts during the year, and a review of the sanitary condition of the city; it shall also, when the city council or the standing committee thereof on finance so requires, send to the auditor of accounts an estimate in detail of the appropriations required by its department during the next financial year.

Boards of health may enforce regulations as to house drainage. Public Statutes, c. 80, § 12.

13. Such boards may prepare and enforce in their respective cities such regulations as they may deem necessary for the safety and health of the people, with reference to house drainage and its connection with public sewers, where a public sewer abuts the estate to be drained.

Cities to vote on acceptance of five preceding sections, when. Public Statutes, c. 80, § 13.

14. If at any time a city has not voted to accept the five preceding sections, or chapter one hundred and thirty-three of the statutes of the year eighteen hundred and seventy-seven, and fifty voters residing therein present a written request to that effect thirty days prior to any meeting for the election of city officers therein, the mayor and aldermen shall notify and warn the legal voters thereof to vote upon the acceptance of said sections at such election.

In case of epidemic, etc., boards of health may be appointed in cities not accepting, etc. Public Statutes, c. 80, § 14.

15. In case of a severe epidemic, or other danger to the public health, the mayor and aldermen of the city where there is no board of health may, upon the request of one hundred voters residing therein, appoint such a board to act during the emergency, with the powers and duties of a board of health duly appointed under section eight. [Chapter 80, Public Statutes.]

City physician, how appointed, when ex officio a member of board; how removed. Public Statutes, c. 80, § 15.

16. In cities where the city physician is ex officio a member of the board of health, he shall be appointed by the mayor, with the approval of the board of aldermen, for a term of three years, subject to removal, for cause, by the same authority.

Board of health may appoint agents, etc. Public Statutes, c. 80, § 16.

17. The board of health in a city or town may appoint an agent or agents to act for it in cases of emergency, or when it cannot be conveniently assembled; and such agent so appointed shall have all the authority which the board appointing him had; but he shall, within two days, report his action in each case to it for its approval, and shall be directly responsible to it and under its control and direction. An agent appointed to make sanitary inspections may make complaint in cases of violation of any law, ordinance, or by-law relating to the public health in a city or town.

to retain charge of a case, after acting therein. Public Statutes, c. 80, § 17.

18. The board of health of a city or town shall retain charge of any case arising under the provisions of this chapter in which it shall have acted, to the exclusion of the overseers of the poor.

NUISANCES, CONTAGION, ETC.

19. The board of health of a town shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth, and causes of sickness, within its town, or on board of vessels within the harbor of such town, and respecting articles which are capable of containing or conveying infection or contagion, or of creating sickness, brought into or conveyed from its town, or into or from any vessel. Whoever violates any such regulation shall forfeit a sum not exceeding one hundred dollars.

Board of health to make regulations respecting nuisances, etc. Public Statutes, c. 80, § 18.

The keeping of swine may be prohibited as a sanitary regulation. The prohibition may apply to the entire town or city, or only to a part of the town or city, if that part is so situated as to require peculiar and exceptional provisions.

Commonwealth v. Patch, 97 Mass. 221.

A regulation that no person shall remove, cart, or carry through any of the streets, lanes, or alleys of a city, any house-dirt, refuse, offal, filth, or animal or vegetable substance from any of the dwelling-houses or other places occupied by the inhabitants, in any cart, wagon, truck, hand-cart, or other vehicle, unless such person so removing, together with the cart, shall be duly licensed for that employment and purpose by the mayor and aldermen, upon such terms and conditions as they shall deem the health, comfort, convenience, or interest of the city require, on pain of forfeiting a sum not less than three dollars nor more than twenty, is valid.

Henry Vandine, petitioner, 6 Pickering, 187.

20. The board shall give notice of all regulations made by it by publishing the same in some newspaper of its town, or, where there is no such newspaper, by posting them up in some public place in the town. Such notice shall be deemed legal notice to all persons.

to give notice of regulations. Public Statutes, c. 80, § 19.

Notice must be given of general regulations prescribed by the board, before parties can be held in fault for a disregard of their requirements. But although such general regulations may seriously interfere with the enjoyment of private property, and disturb the exercise of valuable private rights, no previous notice to parties so to be affected by them is necessary to their validity. They belong to that class of police regulations to which all individual rights of property are held subject, whether established directly by enactments of the legislative power, or by its authority through boards of local administration.

City of Salem v. Eastern Railroad Company, 98 Mass. 443.

21. The board shall examine into all nuisances, sources of filth, and causes of sickness, within its town, or in any vessel within the harbor of such town, that may in its opinion be injurious to the health of the inhabitants, and shall destroy, remove, or prevent the same as the case may require.

to examine into and abate nuisances, etc. Public Statutes, c. 80, § 20.

22. The board or the health officer shall order the owner or occupant at his own expense to remove any nuisance, source of

to order certain nuisances, etc., abated by owner.

Public Statutes,
c. 80, § 21.

filth, or cause of sickness, found on private property, within twenty-four hours, or such other time as it deems reasonable, after notice served as provided in the following section; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof.

The board may order the removal of a nuisance without previous notice to the owner or occupant, and without any opportunity by him to be heard.

City of Salem v. Eastern Railroad Company, 98 Mass. 443.

In the above case, Wells, J., says, in relation to boards of health, "Their action is intended to be prompt and summary. They are clothed with extraordinary powers for the protection of the community from noxious influences affecting life and health, and it is important that their proceedings should be embarrassed and delayed as little as possible by the necessary observance of formalities. Although notice and opportunity to be heard upon matters affecting private interests ought always to be given when practicable, yet the nature and object of those proceedings are such that it is deemed to be most for the general good that such notice should not be essential to the right of the board to act for the public safety. Delay for the purpose of giving notice, involving the necessity either of public notice or of inquiry to ascertain who are the parties whose interests will be affected, and further delay for such hearings as the parties may think necessary for the protection of their interests, might defeat all beneficial results from an attempt to exercise the powers conferred upon boards of health. The necessity of the case and the importance of the public interests at stake justify the omission of notice to the individual."

The adjudication of the board that a nuisance exists is conclusive, and no appeal lies therefrom.

City of Salem v. Eastern Railroad Company, 98 Mass. 449.

The board should keep an accurate record of their proceedings, and all adjudications should appear therein in clear and distinct language.

Order for abatement, how served.
Public Statutes,
c. 80, § 22.

23. Such order shall be made in writing, and served by any person competent to serve a notice in a civil suit, personally on the owner, occupant, or his authorized agent; or a copy of the order may be left at the last and usual place of abode of the owner, occupant, or agent, if he is known and within the state. But if the premises are unoccupied and the residence of the owner or agent is unknown or without the state, the notice may be served by posting the same on the premises and advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

The manifest purpose of this provision is to enable the owner or occupant to remedy the evil in the mode least detrimental or offensive to himself, and thus secure himself and his premises from the intrusion of the agents of the board of health.

City of Salem v. Eastern Railroad Company, 98 Mass. 444.

The order addressed to a person directing him to remove a nuisance should describe the nature and locality of the nuisance.

City of Salem v. Eastern Railroad Company, 98 Mass. 444.

It is not the purpose of the order to direct in what mode the person should proceed to remove the nuisance.

It should direct the end to be accomplished, leaving the party to adopt any effectual mode which he may choose.

City of Salem v. Eastern Railroad Company, 98 Mass. 444.

An order of a board of health, reciting that a railroad company, by filling up parts of a mill-pond in Salem, without supplying suitable and safe culverts, sluiceways, trenches, and other means of drainage, have created and are maintaining a nuisance at said pond, which is dangerous to the public health, and a cause of sickness to the inhabitants, and requiring the company to remove said nuisance and cause of sickness within seven days after service of notice of the order, sufficiently informs the company of the nature and locality of the nuisance.

City of Salem v. Eastern Railroad Company, 98 Mass. 431.

24. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth, or cause of sickness, to be removed, and all expenses incurred thereby shall be paid by the owner, occupant, or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

Owner not complying, board to remove nuisance at his expense. Public Statutes, c. 80, § 23.

If the owner or occupant neglects to remove the nuisance, the board are then at liberty to enter upon the private property where it exists, and take such measures as they may see fit for its removal.

City of Salem v. Eastern Railroad Company, 98 Mass. 444.

If the order served upon the party prescribes a certain mode of remedying the existing nuisance, the party is not bound to adopt that mode of remedying the evil, if another mode could be made to answer the end sought; nor is the board restricted to that mode, if they are obliged to take action. They are not only at liberty, but it is their duty, to exercise their best discretion at the time.

City of Salem v. Eastern Railroad Company, 98 Mass. 445.

The importance of the duty imposed upon boards of health, the necessity of prompt and decisive measures to protect the public health, require a wide discretion in the use of means by which to "destroy, remove, or prevent" such cause of sickness. If it be necessary to the proper performance of their duty, they may undoubtedly, in the exercise of their discretion, resort to means and measures which affect injuriously other lands than those upon which the manifestation of the cause of sickness is found.

Thus, where a railroad company built their railroad originally on piles across a body of water, not interfering with the free circulation of the water, but afterwards from time to time filled in with earth the structure, so as to finally make it solid, without providing sufficient culverts or other means of drainage, and thereby divided and confined the waters, and rendered them stagnant and noisome, a source of filth, and injurious to the public health, after notice to the company and their refusal to act, it was held that the board were justified in entering upon the land of the railroad company, and

in digging a trench there, for the purpose of removing or preventing the nuisance existing upon the neighboring land.

City of Salem v. Eastern Railroad Company, 98 Mass. 446.

It is not to be inferred from the fact that the preliminary order is required to be served only upon the owner or occupant of the land upon which the nuisance is found, that the subsequent proceedings for recovery of the expenses of removal are limited to such owner or occupant. By the express terms of the statute, they may be claimed of any "other person who caused or permitted" the nuisance.

As to such other person, it is only requisite that he has had actual notice from the board of the existence thereof.

City of Salem v. Eastern Railroad Company, 98 Mass. 445.

An action to recover expenses incurred in the removal of a nuisance should be brought in the name of the city or town, and not in the names of the members of the board.

City of Salem v. Eastern Railroad Co., 98 Mass. 442.

Winthrop v. Farrar, 11 Allen, 398.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," but who was not heard, and had no opportunity to be heard, such party is not concluded by the findings or adjudications of the board, and may contest all the facts upon which his liability is sought to be established.

City of Salem v. Eastern Railroad Co., 98 Mass. 447.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," the record of proceedings of the board are *prima facie* evidence of the existence of a nuisance which warranted the board in taking action and incurring expense for its removal: but it is not evidence that the nuisance was caused by the defendant, and all the facts upon which it is sought to charge the defendant with liability are open to be tried and determined by the proofs in the case.

City of Salem v. Eastern Railroad Co., 98 Mass. 451.

Board may notify occupants of unfit dwelling-place to quit, etc.
Public Statutes, c. 80, § 24.

25. The board, when satisfied upon due examination that a cellar, room, tenement, or building, in its town, occupied as a dwelling-place, has become, by reason of the number of occupants, want of cleanliness, or other cause, unfit for such purpose, and a cause of nuisance or sickness to the occupants or the public, may issue a notice in writing to such occupants, or any of them, requiring the premises to be put into a proper condition as to cleanliness, or, if they see fit, requiring the occupants to quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants forcibly and close up the premises, and the same shall not be again occupied as a dwelling-place without the consent in writing of the board. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit not less than ten nor more than fifty dollars.

26. When a person is convicted on an indictment for a common nuisance injurious to the public health, the court in its discretion may order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health; and the form of the warrant to the sheriff or other officer may be varied accordingly.

When a party is convicted of a nuisance, board may order it destroyed.
Public Statutes, c. 80, § 25.

27. The superior court, or a justice thereof in term time or vacation, may, either before or pending a prosecution for a common nuisance affecting the public health, issue an injunction to stay or prevent the same until the matter is decided by a jury or otherwise; may enforce such injunction according to the course of proceedings in chancery; and may dissolve the same when the court or one of the justices shall think proper.

Injunction may issue in cases of nuisance.
Public Statutes, c. 80, § 26.

28. When the board thinks it necessary for the preservation of the lives or health of the inhabitants to enter any land, building, premises, or vessel within its town, for the purpose of examining into and destroying, removing, or preventing a nuisance, source of filth, or cause of sickness, and the board or any agent thereof sent for that purpose is refused such entry, any member of the board or such agent may make complaint under oath to any justice of any court of record or to two justices of the peace of the county, stating the facts of the case so far as he has knowledge thereof; and said justice or justices may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such agent of the board, or to any constable of such town, commanding him to take sufficient aid, and at any reasonable time repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and to destroy, remove, or prevent the same, under the directions of the board.

Board may make compulsory examination of premises, when.
Public Statutes, c. 80, § 27.

WET, ROTTEN, AND SPONGY LANDS.

29. Lands in a city or town which are wet, rotten, or spongy, or covered with stagnant water, so as to be offensive to persons residing in the vicinity thereof, or injurious to health, shall be deemed to be a nuisance, and the board of health or health officer of such city or town may, upon petition and hearing, abate such nuisance in the manner provided in the following sections.

Lands injurious to health, etc., deemed a nuisance.
Public Statutes, c. 80, § 28.

30. Any person claiming to be injuriously affected by such nuisance may, by petition describing the premises upon which it is alleged to exist, and setting out the nature of the nuisance complained of, apply to the board or health officer for its abatement; whereupon such board or health officer shall proceed to view the premises, and examine into the nature and cause of such nuisance.

Persons injuriously affected, etc., may apply to board for abatement.
Public Statutes, c. 80, § 29.

31. Upon such examination, the board or health officer, if of

Board to appoint hearing, etc.
Public Statutes, c. 80, § 30.

opinion that the prayer of the petition or any part thereof should be granted, shall appoint a time and place for a hearing, and before the time so appointed shall cause reasonable notice of the time and place to be given to the petitioners, the persons whose lands it may be necessary to enter upon to abate the nuisance, and any other persons who may be affected by the proceedings, and, except in those cities and towns in which the mayor and aldermen and selectmen constitute the board of health, to the mayor or the chairman of the selectmen, that they may be heard upon the necessity and mode of abating such nuisance, and the questions of damages, and of the assessment and apportionment of the expenses of the abatement.

Form of notice, and how served.
Public Statutes, c. 80, § 31.

32. Such notice shall be in writing, and may be served, by any person competent to serve civil process, upon the mayor, or chairman of the selectmen, the petitioners, the owner or occupant of any land upon which it may be necessary to enter, or which may be benefited by the abatement, or the authorized agent of such owner or occupant, or by leaving an attested copy of such notice at the last and usual place of abode of such persons; but if the lands are unoccupied, and the owner or agent is unknown, or out of the state, the notice to such owner may be served by posting an attested copy thereof upon the premises, or by advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

Board after hearing may abate nuisance. Manner of such abatement. Damages, and upon whom assessed.
Public Statutes, c. 80, § 32.

33. At the time and place appointed for the hearing, the board or health officer shall hear the parties, and after the hearing may cause such nuisance to be abated, according to its or his discretion; and for that purpose may enter and make such excavations, embankments, and drains upon any lands, and under and across any streets and ways, as may be necessary for such abatement; and shall also determine in what manner and at whose expense the improvements made shall be kept in repair, and shall estimate and award the amount of damage sustained by and benefit accruing to any person by reason of such improvements, and what proportion of the expense of making and keeping the same in repair shall be borne by the city or town and by any person benefited thereby. The damages so awarded shall be paid by the city or town, and there shall be assessed to the several persons benefited by such improvements their proportionate part, to be ascertained as before provided, of the expense of making and keeping in repair such improvements, and the same shall be included in the next city or town taxes of such persons, and shall be a lien upon the real estate benefited thereby, and be collected in the same manner as other taxes upon real estate, and shall be liable to abatement as other taxes now are.

34. The board or health officer shall, within thirty days after the abatement of any nuisance in the manner hereinbefore provided, make return to the city or town clerk of its or his doings in the premises, which return shall be by him recorded in the city or town records.

Board to make return of doings to town clerk. Public Statutes, c. 80, § 33.

35. If the board or health officer unreasonably refuses or neglects to proceed in the matter of such petition, the petitioner may apply by petition to the superior court or any justice thereof, who, upon a hearing and good cause shown, may appoint three commissioners, who shall proceed in the manner hereinbefore provided.

If board unreasonably refuses to act, superior court may appoint commissioners. Public Statutes, c. 80, § 34.

36. Any person aggrieved by the decision of the board, health officer, or commissioners, in their estimate and award of damages, may make complaint to the county commissioners for the county at any time within one year after the return to the city or town clerk; whereupon the same proceedings shall be had as in cases where persons or parties are aggrieved by the award of damages by selectmen for land taken for a town way.

Person aggrieved in award of damages may apply for jury. Public Statutes, c. 80, § 35.

APPEAL TO COUNTY COMMISSIONERS.

37. Any person aggrieved by the neglect or refusal of the board of health in a city or town to pass all proper orders abating a nuisance or nuisances may appeal to the county commissioners, who may hear and determine the matter of such appeal, and exercise in such case all the powers which the board might exercise.

by refusal of board to abate a nuisance may appeal to county commissioners. Public Statutes, c. 80, § 36.

38. The party so appealing shall, within twenty-four hours after such neglect or refusal, give written notice to the opposite party of his intention so to appeal, and within seven days shall present a petition to some one of the commissioners, setting forth the grievances complained of, and the action of the board of health thereon, and shall thereupon enter into such recognizance before the commissioners, in such sum, and with such surety or sureties, as they shall order.

Party appealing to give notice, etc. Other proceedings. Public Statutes, c. 80, § 37.

39. Each commissioner, when acting under the provisions of this chapter, shall tax three dollars per day for time, and five cents a mile for travel to and from the place of meeting, to be paid into the county treasury; and such costs shall in the first instance be paid by the appellant, and the commissioners may award that such costs and any other costs of the proceeding shall be paid by either party, as in their judgment justice shall require.

Costs and expenses, how paid. Public Statutes, c. 80, § 38.

INFECTED PERSONS AND ARTICLES.

40. The board of health of a town may grant permits for the removal of any nuisance, infected articles, or sick person, within the limits of its town, when it thinks it safe and proper so to do.

Board may permit removal of infected articles, etc. Public Statutes, c. 80, § 39.

Board to make provision for persons infected. Public Statutes, c. 80, § 40.

41. When a person coming from abroad or residing in a town in this state is infected, or lately has been infected, with the plague or other sickness dangerous to the public health, except as is otherwise provided in this chapter, the board shall make effectual provision in the manner which it judges best for the safety of the inhabitants by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessities, which shall be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; or, if he is not an inhabitant of any town, at the charge of the commonwealth.

Notice should be given to the town to which the infected person belongs, before commencing an action to recover the expenses incurred by furnishing him with assistance and necessities.

Inhabitants of Springfield v. Inhabitants of Worcester, 2 Cush. 52.

The following notice sent by the selectmen of Springfield to the selectmen of Worcester was held to be sufficient:—

SPRINGFIELD, May 25, 1846.

GENTLEMEN, — James E. Belden, a colored man, came here, not far from the 1st of this month, diseased with the small-pox. The expenses of his sickness have been borne by this town, the man himself having no means of paying them. According to the information we have, the town of Worcester is liable for these expenses. We have therefore thought it our duty (although not legally obliged so to do) to notify you of the case, that you may take such measures in regard to it as you may deem proper. We are told Henry W. Miller, of your place, is well acquainted with Belden.

The physicians who have had charge of the case state that their patient will probably recover. His disease has been the worst form of small-pox.

In behalf of the selectmen of Springfield,

HENRY MORRIS, *Chairman*.

TO THE SELECTMEN OF WORCESTER.

Inhabitants of Springfield v. Inhabitants of Worcester, 2 Cush. 52.

If infected person cannot be removed, others may be. Public Statutes, c. 80, § 41.

42. If the infected person cannot be removed without danger to his health, the board shall make provision for him, as directed in the preceding section, in the house in which he may be; and may cause the persons in the neighborhood to be removed, and take such other measures as it judges necessary for the safety of the inhabitants.

Persons may be stationed in places bordering on other states to examine, etc. Public Statutes, c. 80, § 42.

43. The board of health of a town near to or bordering upon either of the neighboring states may appoint, by writing, suitable persons to attend at places by which travellers may pass from infected places in other states; who may examine such travellers as it suspects of bringing any infection dangerous to the public health, and if need be may restrain them from travelling until licensed thereto by the board of health of the town to which they may come. A traveller coming from such infected place, who without such license travels within this state, (except to return by the most direct way to the state whence he came,) after he has

been cautioned to depart by the persons so appointed, shall forfeit a sum not exceeding one hundred dollars.

44. Two justices of the peace may, if need be, make out a warrant directed to the sheriff of the county or his deputy, or to any constable, requiring them under the direction of the board to remove any person infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessities, for the accommodation, safety, and relief of the sick.

Two justices may issue warrant to remove sick persons, etc.
Public Statutes, c. 80, § 43.

45. When, upon the application of the board, it appears to a justice of the peace that there is just cause to suspect that baggage, clothing, or goods, found within the town, are infected with the plague or other disease dangerous to the public health, he shall, by warrant directed to the sheriff or his deputy, or to any constable, require him to impress so many men as said justice may judge necessary to secure such baggage, clothing, or goods, and to post said men as a guard over the house or place where such articles are lodged; who shall take effectual care to prevent persons from removing or coming near the same until due inquiry is made into the circumstances.

One justice may issue warrant to secure infected articles, etc.
Sheriff may impress aid.
Public Statutes, c. 80, § 44.

46. The justice may by the same warrant, if it appears to him necessary, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may cause them to be removed thereto, or otherwise detained, until, in the opinion of the board, they are freed from infection.

may take houses and stores for safe keeping of goods, etc.
Public Statutes, c. 80, § 45.

47. The officers, in the execution of the warrant, shall, if need be, break open any house, shop, or other place, mentioned in the warrant, where such articles are; and may require such aid as is necessary to effect the execution of the warrant. Whoever neglects or refuses to assist in the execution of the warrant, after being commanded to assist by either of said officers, shall forfeit a sum not exceeding ten dollars.

Officers may break open houses, shops, etc., and command aid.
Public Statutes, c. 80, § 46.

48. The charges of securing such articles, and transporting and purifying the same, shall be paid by the owners, at such rates and prices as may be determined by the board.

Expenses to be paid by owners of goods.
Public Statutes, c. 80, § 47.

49. When a sheriff or other officer impresses or takes up any houses, stores, lodging, or other necessities, or impresses men, as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town in which such persons or property are so impressed.

Town to make compensation for houses, etc. or services impressed.
Public Statutes, c. 80, § 48.

50. When a person confined in a common jail, house of correction, or workhouse, has a disease which, in the opinion of the physician of the board or of such other physician as it may consult,

Removal of prisoners attacked with disease.
Public Statutes, c. 80, § 49.

is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall by its order in writing direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until its further order. If such person recovers from the disease, he shall be returned to said prison or other place of confinement.

Return of removal to be made to court. Such removal not an escape. Public Statutes, c. 80, § 50.

51. If the person so removed is committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

VACCINATION.

Parents, etc., to cause children to be vaccinated. Penalty for neglect. Public Statutes, c. 80, § 51.

52. Parents and guardians shall cause their children and wards to be vaccinated before they attain the age of two years, and revaccinated when the selectmen or mayor and aldermen shall after five years from the last vaccination require it. For every year's neglect the party offending shall forfeit five dollars.

Selectmen, etc., to enforce vaccination. Penalty for neglect. Public Statutes, c. 80, § 52.

53. The selectmen and mayor and aldermen shall require and enforce the vaccination of all the inhabitants, and, when in their opinion the public health requires it, the revaccination of all the inhabitants who do not prove to their satisfaction that they have been successfully vaccinated or revaccinated within five years. Every person over twenty-one years of age, not under guardianship, who neglects to comply with any such requirement, shall forfeit five dollars.

Towns to provide means. Public Statutes, c. 80, § 53.

54. Towns shall furnish the means of vaccination to such of their inhabitants as are unable to pay for the same.

Inmates of factories, etc., to be vaccinated. Public Statutes, c. 80, § 54.

55. Incorporated manufacturing companies, superintendents of almshouses, state reform schools, industrial schools, lunatic hospitals, and other places where the poor and sick are received, masters of houses of correction, jailers, keepers of prisons, warden of the state prison, and superintendents or officers of all other institutions supported or aided by the state, shall at the expense of their respective establishments or institutions cause all inmates thereof to be vaccinated immediately upon their entrance thereto, unless they produce sufficient evidence of previous successful vaccination within five years.

Towns may make further provision for vaccination. Public Statutes, c. 80, § 55.

56. Each town may make further provision for the vaccination of its inhabitants, under the direction of the board of health or a committee chosen for the purpose.

LYING-IN HOSPITALS.

57. The selectmen of a town may license any person to establish or keep therein a lying-in hospital, hospital ward, or other place for the reception, care, and treatment of women in labor, if the board of health shall first certify to the selectmen that the person applying for such license is in its judgment a suitable person, and that from its inspection and examination of such hospital, hospital ward, or other place aforesaid, the same is suitable, and properly arranged and provided for such business.

Selectmen may license lying-in hospitals, on certificate, etc. Public Statutes, c. 80, § 56.

58. Such license shall continue in force for two years, subject, however, to revocation by the selectmen.

Licenses to be for two years, but revocable. Public Statutes, c. 80, § 57.

59. Every such hospital, hospital ward, or other place shall be subject to visitation and inspection at any time by the board of health, the chief of police, and the selectmen; and if it receives in a year more than six women as patients in labor, it shall also be subject to like visitation and inspection by the state board of health, lunacy, and charity.

Hospitals subject to visitation, etc. Public Statutes, c. 80, § 58.

60. Whoever establishes or keeps or is concerned in establishing or keeping a hospital, hospital ward, or other place for the purpose mentioned in section fifty-six, or is engaged in any such business, without such license, shall for the first offence be punished by fine not exceeding five hundred dollars, one-half of which shall be paid to the complainant, and the other half to the town; and for any subsequent offence by imprisonment in the jail or house of correction not exceeding two years.

Penalties for keeping hospitals without license. Public Statutes, c. 80, § 59.

PROTECTION OF INFANTS.

61. Whoever engages in the business of taking nursing infants or infants under three years of age to board, or of entertaining or boarding more than two such infants in the same house at the same time, shall, within two days after the reception of every such infant beyond the first two, give written notice to the board of health of the city or town where such infant is so to be entertained or boarded, specifying the name and age of the child and the name and place of residence of the party so undertaking its care; and such board may enter and inspect said house and premises while said business is carried on, and direct and enforce such sanitary measures respecting such children and premises as it may deem proper.

Persons taking infants to nurse or board to give notice to board of health. Power of the board. Public Statutes, c. 80, § 60.

62. Whoever violates any of the provisions of the preceding section, or refuses admission to such board for said purpose, shall be punished by fine of not less than fifty nor more than five hundred dollars.

Penalties. Public Statutes, c. 80, § 61.

QUARANTINE.

Towns may establish a quarantine ground.
Public Statutes, c. 80, § 62.

Two or more towns may establish a common quarantine ground.
Public Statutes, c. 80, § 63.

Board of health may establish the quarantine of vessels.
Public Statutes, c. 80, § 64.

Quarantine regulations to extend to all persons, etc.
Public Statutes, c. 80, § 65.

Penalty for violation after public notice.
Public Statutes, c. 80, § 66.

Vessels suspected of infection to be ordered to quarantine ground.
Public Statutes, c. 80, § 67.

Penalty if master, seaman, etc., refuse to answer on oath.
Public Statutes, c. 80, § 68.

Quarantine expenses to be paid by person or owner.
Public Statutes, c. 80, § 69.

63. A town may establish a quarantine ground in a suitable place either within or without its own limits; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained.

64. Two or more towns may at their joint expense establish a quarantine ground for their common use in a suitable place either within or without their own limits; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be.

65. The board of health in each seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor, and may make such quarantine regulations as it judges necessary for the health and safety of the inhabitants.

66. Such regulations shall extend to all persons, goods, and effects arriving in such vessels, and to all persons who may visit or go on board of the same.

67. Whoever violates any such regulation after notice thereof has been given in the manner before provided in this chapter shall forfeit not less than five nor more than five hundred dollars.

68. The board in each seaport town may at any time cause a vessel arriving in such port, when such vessel or the cargo thereof is in its opinion foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees, or persons in possession of the same; and may cause all persons arriving in or going on board of such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under their orders.

69. A master, seaman, or passenger, belonging to a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where an infectious distemper prevails that may endanger the public health, who refuses to make answer on oath to such questions as may be asked him relating to such infection or distemper by the board of health of the town to which such vessel may come, (which oath any member of the board may administer,) shall forfeit a sum not exceeding two hundred dollars; and if not able to pay said sum, he shall suffer six months' imprisonment.

70. All expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by such person or the owner of such vessel or goods respectively.

The owner of a vessel under quarantine regulations is not liable for the expenses of a seaman at a hospital, to which he had been transferred by order of the board of health of a town, and which was under their care.

HOSPITALS AND DANGEROUS DISEASES.

71. Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health.

Hospitals may be provided by towns.
Public Statutes, c. 80, § 70.

72. Such hospitals shall be subject to the orders and regulations of the board, or of a committee of the town appointed for that purpose.

to be under orders of board of health.
Public Statutes, c. 80, § 71.

73. No such hospital shall be established within one hundred rods of an inhabited dwelling-house situated in an adjoining town, without the consent of such town.

not to be near dwelling-house, etc.
Public Statutes, c. 80, § 72.

74. Whoever occupies or uses a building for a hospital in a part of a city or town prohibited by the mayor and aldermen or selectmen shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a portion of a month; and the supreme judicial court in term time or vacation may issue an injunction to prevent such occupancy or use.

not to be occupied without authority.
Injunction.
Public Statutes, c. 80, § 73.

75. When a hospital is established, as provided in section seventy, the physician, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits thereof, and all furniture and other articles used or brought there, shall be subject to such regulations as may be made by the board of health or the committee appointed for that purpose.

Physicians, etc., in hospitals, subject to board of health.
Public Statutes, c. 80, § 74.

76. When a disease dangerous to the public health breaks out in a town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not admit of his removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board as before provided.

If dangerous disease breaks out, board to provide hospital, etc.
Public Statutes, c. 80, § 75.

77. When such disease is found to exist in a town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety. And whoever obstructs the selectmen, board of health, or its agent, in using such means to prevent the spreading of the infection, or wilfully removes, obliterates, defaces, or handles the red flags or other signals so displayed, shall

Selectmen to give notice of infected places
Public Statutes, c. 80, § 76.

forfeit for each offence not less than ten nor more than one hundred dollars.

Penalty on persons in hospitals for violating regulations. Public Statutes, c. 80, § 77.

78. If a physician or other person in any of the hospitals or places of reception before mentioned, or who attends, approaches, or is concerned with the same, violates any regulation lawfully made in relation thereto, either with respect to himself or his or any other person's property, he shall for each offence forfeit not less than ten nor more than one hundred dollars.

Householders to give notice of dangerous diseases. Penalty. Public Statutes, c. 80, § 78.

79. When a householder knows that a person within his family is sick of small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells. If he refuses or neglects to give such notice, he shall forfeit a sum not exceeding one hundred dollars.

Penalty on physician for not giving notice, &c. Public Statutes, c. 80, § 79.

80. When a physician knows that a person whom he is called to visit is infected with small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town; and if he refuses or neglects to give such notice, he shall forfeit for each offence not less than fifty nor more than one hundred dollars.

Expenses recoverable of individuals, how sued for. Public Statutes, c. 80, § 80.

81. Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, which are recoverable of a private person or corporation, may be sued for and recovered in an action of contract.

Fines and forfeitures to inure to use of towns. Public Statutes, c. 80, § 81.

82. Fines and forfeitures incurred under general laws, the special laws applicable to a town, or the by-laws and regulations of a town, relating to health, shall inure to the use of such town.

Under statute 1849, chap. 211, sect. 7, which provides that all fines and forfeitures, incurred under the general law or the special laws applicable to any town or city, or the ordinances, by-laws, and regulations of any town or city, relating to health, shall inure to the use of such town or city, and may be recovered by complaint in the name of the treasurer, it was held that such fines and forfeitures were recoverable only by complaint in the name of the treasurer of the city or town, and in no other way.

Commonwealth v. Fahey, 5 Cush. 408.

Under sect. 26, chap. 28 of the Public Statutes, the city marshal or other police officer, or the city treasurer, may prosecute for all fines and forfeitures which may inure to the city.

The ordinances and by-laws of the city of Boston relating to burying-grounds and the burial of the dead were held to be regulations relating to health within the meaning of the above statute.

Commonwealth v. Fahey, 5 Cush. 411.

Certain provisions not to apply to small-pox. Public Statutes, c. 80, § 82.

83. The provisions of sections forty, forty-one, seventy-five, seventy-six, and seventy-seven, of chapter eighty, Public Statutes, so far as they confer authority for the removal of patients from their

homes, except in cases of persons residing in boarding-houses, hotels, or where two or more families occupy the same dwelling, and other cases, where in the opinion of the board and the attending physician the case cannot be properly isolated, shall not apply to small-pox.

84. All reasonable expenses which have been heretofore or may hereafter be incurred by the board of health of a city or town, in making the provision required by law for a person infected with the small-pox or other disease dangerous to the public health, shall be paid by the person himself, his parents, or master, if able; otherwise by the town in which he has a legal settlement; and if he has no settlement, by the commonwealth, in which case the bills therefor shall be approved by the state board of health, lunacy, and charity.

Expenses, how to be paid. Public Statutes, c. 80, § 83.

OFFENSIVE TRADES.

85. The board of health of a town shall from time to time assign certain places for the exercise of any trade or employment which is a nuisance or hurtful to the inhabitants, or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors, or is otherwise injurious to their estates, and may prohibit the exercise of such trade or employment in places not so assigned; the board may also forbid such exercise within the limits of the town or in any particular locality thereof. All such assignments shall be entered in the records of the town, and may be revoked when the board shall think proper.

Board to assign places for exercising offensive trades; and may prohibit them. Public Statutes, c. 80, § 84.

So far as this section extends, the rules and course of proceeding under the common law are superseded, but in all other respects it continues in force as before. If the board of health acts and assigns places in which any particular trade or employment may be carried on, such an assignment would undoubtedly legalize the occupation of any person conducting his business in that place, and he would then be liable to no process, suit, or prosecution, other than those which are specially appointed and prescribed. But if no such assignment has been made, and the board, in the exercise of their discretion, have not seen fit to act at all, a remedy for injuries to the public or for violation of private rights by the permanent maintenance of offensive trades and employments must be found in the rules and principles of the common law. The statute, by leaving that body to act according to the discretion of its members, has imposed no duty upon them which they are imperatively bound to perform, and no means have been provided by a recourse to which, as by a complaint made to them, they can be compelled to exercise the power with which they are intrusted.

Commonwealth v. Rumford Chemical Works, 16 Gray, 231.

The board may pass an order prohibiting the exercise of an offensive trade, without having given previous notice to parties interested.

Belcher v. Farrar, 8 Allen, 327.

In the above case, Bigelow, C. J., says, "If, as preliminary to the exercise of any jurisdiction over the subject-matter, the selectmen were required

to give notice to all persons exercising offensive trades or employments within the limits of the town, of their intention to prohibit the continuance of them, it would follow necessarily that such persons would have a right to appear and object, and ask for a hearing and trial on the question whether the use of their property was hateful or noxious, so as to fall within any of the classes contemplated by the statute. This would often lead to protracted examinations, which might occupy days or weeks. If, in the mean time, the alleged offensive and noisome trades might be carried on, great injury to health might be occasioned; and it would be impossible to prevent the evils which it was the manifest object of the statute promptly to suppress."

It is questionable whether the prohibition of offensive trades is a proper subject of a by-law or ordinance, because that matter is specially provided for by statute; and to prohibit their exercise in any particular locality in a town or city by by-law or ordinance would interfere with the right of appeal to a jury which the statute secures.

Commonwealth v. Patch, 97 Mass. 223.

The keeping of swine cannot be considered a trade within the meaning of the law, and would be a proper subject of a by-law or ordinance.

Commonwealth v. Patch, 97 Mass. 223.

An order of the board under this section is not in the nature of an adjudication of a particular case, but of a general regulation of the trade or employment mentioned therein. It is not to be construed with technical strictness, but with the same liberality as all votes and proceedings of municipal bodies or officers who are not presumed to be versed in the forms of law; and every reasonable presumption is to be made in its favor. It need not state in direct terms that the trade which it prohibits is a nuisance. It is sufficient if the order clearly shows, that, in the opinion of the board, the exercise of such trade will be hurtful to the inhabitants, or injurious to the public health, or be attended by noisome and injurious odors.

Taunton v. Taylor, 116 Mass. 261.

The following order of a board of health was held to be a valid exercise of the power conferred upon boards of health:—

"Ordered, that the exercise of the trade or employment of preparing tripe, manufacturing neat's-foot oil, tallow and glue stock, and the boiling and trying of bones, hoofs, heads, refuse, and partially decayed animal matter, and as a part of such trade or employment, the storing about the premises where such business is carried on, of putrid meats, bones, heads, legs, and the various other materials from which offensive smells emanate, which are used in such trade or employment, be and the same hereby is forbidden within the limits of the city of Taunton."

Taunton v. Taylor, 116 Mass. 261.

A board of health may regulate as well as prohibit the exercise of offensive trades.

Sawyer v. State Board of Health, 125 Mass. 195.

The same power by this section is given to the boards of health of towns and cities as is given by sect. 93, chap. 80, Public Statutes, to the state board of health, lunacy, and charity. The only difference is this: that by sect. 93 the state board is bound to give notice to a party, and allow him a hearing before it can pass an order of prohibition: but under this section the local boards may pass an order of prohibition without any previous notice.

Sawyer v. State Board of Health, 125 Mass. 191.

86. When it appears on a trial before the superior court for the county, upon a complaint made by any person, that a place or

building so assigned has become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or is otherwise hurtful or dangerous to the neighborhood or to travellers, the court may revoke such assignment and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented.

such assign-
ment.
Public Statutes,
c. 80, § 85.

87. A person injured either in his comfort or the enjoyment of his estate by such nuisance may have an action of tort for the damage sustained thereby.

Action for dam-
ages from
nuisance.
Public Statutes,
c. 80, § 86.

88. Orders of prohibition shall be served upon the occupant or person having charge of the premises where such trade or employment is exercised. If the party upon whom such order is served for twenty-four hours after such service refuses or neglects to obey the same, the board shall take all necessary measures to prevent such exercise; and the person so refusing or neglecting shall forfeit not less than fifty nor more than five hundred dollars.

Orders of pro-
hibition, etc., to
be served on
occupant. If
he refuses to
obey, board
may prevent.
Penalty.
Public Statutes,
c. 80, § 87.

A notice ordered by the board and duly received is sufficiently served. It need not necessarily be served by a constable or other officer.

Winthrop v. Farrar, 11 Allen, 398.

The supreme judicial court has authority under its general jurisdiction as a court of equity to restrain by injunction the carrying on of an offensive trade which has been prohibited by a board of health. But the board must act in good faith towards the parties interested, and if by their action they have misled them and put them in a position to prevent their availing themselves of their right to appeal, and by reason thereof they have lost their opportunity to appeal, the court will refuse to enforce the orders of the board by a process in equity.

Winthrop v. Farrar, 11 Allen, 402.

A bill in equity to restrain a party from exercising an offensive trade or employment prohibited by the board of health of a city is properly brought in the name of the city and properly signed by the mayor.

Taunton v. Taylor, 116 Mass. 262.

89. Any person aggrieved by an order may appeal therefrom, and shall within three days from the service thereof upon him apply to the superior court, if in session in the county where such order is made, or in vacation to a justice of said court, for a jury; and such court or justice shall issue a warrant for a jury, to be impanelled at a time and place expressed in the warrant, in the manner provided in regard to the laying out of highways. If a person by mistake of law or fact or by accident fails to appeal from any such order, and to apply to the superior court or a justice thereof for a jury within said three days, and if he makes it appear to the court or justice that such failure was caused by mistake or accident, he may at any time within thirty days from the service of the order upon him appeal therefrom and apply for a jury with the same effect as if done within the said three days.

Appeal by per-
son aggrieved.
Public Statutes,
c. 80, § 88.

Trade not to be exercised mean-while.
Public Statutes, c. 80, § 89.

90. During the pendency of the appeal such trade or employment shall not be exercised contrary to the order; and upon any violation of the order the appeal shall forthwith be dismissed.

The statute giving to boards of health the power to forbid the exercise, within the limits of a town or city, or in any particular locality thereof, of any trade or employment which is a nuisance or hurtful to the inhabitants or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors or is otherwise injurious to their estates, and providing for an appeal, and that during the pendency of the appeal such trade or employment shall not be exercised contrary to the order, is within the authority of the legislature and constitutional.

Taunton v. Taylor, 116 Mass. 260.

In *Taunton v. Taylor*, 116 Mass. 260, Gray, C. J., says, "To allow the offensive trade to be carried on until it had been decided by a jury to be a nuisance, and the questions of law arising upon such a trial had been determined by the court, would defeat the purpose of the statute. It is a case in which private rights must be held subordinate to the public welfare, and falls within the strictest interpretation of the maxim, *Salus populi suprema lex*."

"The rights of any person to be affected by the order of prohibition are reasonably secured by requiring the order to be served upon him or the person in charge of his business, and by allowing him an appeal to a jury to be impanelled immediately without waiting for a regular term of court, and by whose verdict the order may be altered, annulled, or affirmed."

Taunton v. Taylor, 116 Mass. 260.

Verdict of jury may alter, etc., order; to be returned for acceptance.
Public Statutes, c. 80, § 90.

91. The verdict of the jury, which may either alter the order, or affirm or annul it in full, shall be returned to the court for acceptance as in case of highways; and said verdict when accepted shall have the authority and effect of an original order from which no appeal had been taken.

The following order was issued by the state board of health:—

COMMONWEALTH OF MASSACHUSETTS.

STATE BOARD OF HEALTH, BOSTON, April 5, 1876

To GEORGE A. SAWYER of the town of Watertown, in the County of Middlesex.

You are hereby notified, that at a meeting of the state board of health, held at Boston, in the county of Suffolk, on the third day of April, 1876, it was ordered, on the petition of W. H. Ingraham and four others, and after a hearing of the parties, that George A. Sawyer of Watertown be, and he hereby is, directed to discontinue the business of slaughtering and rendering on the premises now occupied by him, on and after the fifteenth day of May, 1876. And it is adjudged and determined by this board, that the premises are noxious and offensive, and that the public health and the public comfort and convenience require that the said George A. Sawyer be ordered, as aforesaid, to cease and desist from carrying on the said business on the said premises, on and after the fifteenth day of May, 1876. And you are hereby directed to comply in all respects with the requirements of the said order, under penalty of what may follow thereon.

An appeal was taken to a jury of the superior court. The case was then tried in the superior court, and the jury returned the following verdict and special findings:—

"The jury alter the order of the state board of health, dated April 5, 1876, as follows: That Mr. George A. Sawyer shall be permitted to continue the business of slaughtering animals on the premises now occupied by him in the town of Watertown, under the restrictions as per appended sheet.

"1. Mr. George A. Sawyer shall be required to concrete the cellar under his slaughter-house, in concave form.

"2. Mr. Sawyer shall not keep swine in or under his slaughter-house.

"3. All offal and offensive matter shall be removed from the above premises before ten o'clock p.m. of the day of killing, in covered, water-tight boxes or tanks.

"4. Said premises shall be kept at all times in a condition of neatness and cleanliness acceptable to the local board of health."

Held, that the several findings of the jury were sufficiently clear, precise, and definite in matters of form, and were proper in substance.

Sawyer v. State Board of Health, 125 Mass. 196.

Where an appeal is taken and trial had before a sheriff's jury, if the defendant is dissatisfied with the verdict, his remedy is, by application to the superior court, to set it aside, and, if aggrieved by any ruling of that court in matter of law, by bringing the question before the supreme court on exceptions or appeal.

Taunton v. Taylor, 116 Mass. 262.

92. If the order is affirmed by the verdict, the town shall recover costs against the appellant; if it is annulled, the appellant shall recover damages and costs against the town; and if it is altered, the court may fender such judgment as to costs as in its discretion may seem just.

Costs, how assessed, and to what amount. Public Statutes, c. 80, § 91.

93. Whoever occupies or uses a building for carrying on therein the business of slaughtering cattle, sheep, or other animals, or for a melting or rendering establishment, or for other noxious or offensive trades and occupations, or permits or allows said trades or occupations to be carried on upon premises owned or occupied by him, without first obtaining the written consent and permission of the mayor and aldermen of the city or selectmen of the town in which the building or premises are situated, shall forfeit a sum not exceeding two hundred dollars for every month he so occupies or uses such building or premises, and in like proportion for a longer or shorter time: *provided*, that this section shall not apply to any building or premises occupied or used for the trades or occupations before described on the eighth day of May in the year eighteen hundred and seventy-one; but no person occupying or using any building or premises on said date for the trades or occupations aforesaid shall enlarge or extend the same without first obtaining the written consent and permission of the mayor and aldermen or selectmen.

Slaughter-houses, etc., not to be used without leave. Penalty. Public Statutes, c. 80, § 92.

The above section is constitutional and valid as a police regulation.

Watertown v. Mayo, 109 Mass. 318.

Where a person before the passage of the above statute used and occupied a building on his own land as a slaughter-house, and therein slaughtered

cattle, sheep, and other animals. as a business, and after the passage of the statute he continued the business of slaughtering in said building, when the same caught fire accidentally, and was consumed, and afterwards he immediately rebuilt said slaughter-house on the same site, and continued his business of slaughtering cattle, sheep, and other animals therein, and it further appeared that the new building was different from the old one in its construction and arrangement, but was not larger or more extensive in size or capacity, the court held that the right to continue, without license, the same business in the building, was not forfeited, and that the building was within the exception stated in the section.

Watertown v. Sawyer, 109 Mass. 320.

The manifest purpose of the legislature is to protect the business already established, in the place where it is carried on, not the identical building which happened to be standing for its use when the law was enacted.

Watertown v. Sawyer, 109 Mass. 320.

A person was the owner of land and buildings used for a long period for a melting and rendering establishment and for the manufacture of soap in Somerville, a city containing more than four thousand inhabitants. In this rendering business, he made use of two open kettles: but the building in which they were placed did not cover the entire lot of land. In the year 1872 he tore down a part of his buildings, which were old and dilapidated, and, without consent or permission from the mayor and aldermen of Somerville, erected a new building, standing partly on land covered by the old buildings and partly on land that had not been so covered. The new building covered about one-third as much space as the old buildings, and was two stories high with a French roof, while the old buildings were, for the most part, only one story in height. The owner's purpose was to place in that part of the new building formerly covered by the old one a covered kettle or tank for melting and rendering purposes, and to use the residue of the building for storage and other purposes connected with his business, and to tear down and discontinue the use of the old buildings and of the two open kettles. The capacity of the proposed new tank for rendering purposes would not exceed, and might not equal, that of the two open kettles. The old buildings were standing and in use, except so far as displaced by the new building.

Upon these facts the court held that it did not appear that the defendant had enlarged the premises occupied by him for the business in question, or that he had increased or purposed to increase the business, and refused to issue an injunction restraining him from so enlarging and extending them.

Somerville v. O'Neil, 114 Mass. 353.

State board may
prohibit offen-
sive trades.
Penalty.
Public Statutes,
c. 80, § 93.

94. When any building or premises are so occupied or used, the state board of health, lunacy, and charity shall, upon application made to it for that purpose, appoint a time and place for hearing the parties, and give due notice thereof to the party against whom the application is made, and after such notice and hearing may, if in its judgment the public health or the public comfort and convenience so require, order any person to desist and cease from further carrying on said trades or occupations in such building or premises; and any person thereafter continuing so to occupy or use such building or premises shall forfeit a sum not exceeding two hundred dollars for every month of such occupancy and use, and in like proportion for a longer or shorter time.

Precisely the same power is given by sect. 84, chap. 80 of the Public Statutes, to the local boards of health, as by this section is given to the state board. The only difference is this, that the state board is bound to give notice to a party, and allow him a hearing, before it can pass an order of prohibition; but the local boards may pass an order of prohibition without any previous notice.

Sawyer v. State Board of Health, 125 Mass. 191.

The same right to appeal to a jury from an order of the state board exists, as is provided for an appeal from an order of a local board under sect. 84.

Sawyer v. State Board of Health, 125 Mass. 191.

95. The supreme judicial court in term time or vacation may issue an injunction to prevent the occupancy, use, enlargement, or extension of any building or premises occupied or used for the trades or occupations aforesaid, without the written consent and permission being first obtained; and also in like manner to enforce the orders of the state board issued under the preceding section.

Injunction to prevent offensive trades.
Public Statutes, c. 80, § 94.

A bill in equity to restrain by injunction a person from occupying and using a building for carrying on the business of slaughtering cattle, sheep, or other animals, without the written consent of the selectmen, is properly brought in the name of the inhabitants of the town.

Inhabitants of Watertown v. Mayo, 109 Mass. 315.

96. The three preceding sections shall not be so construed as to impair any other remedies which may exist in cases of nuisance.

Other remedies not impaired by preceding provisions.
Public Statutes, c. 80, § 96.

SWINE-SLAUGHTERING ASSOCIATIONS.

97. Three or more persons who associate themselves together by such an agreement in writing as is described in section sixteen of chapter one hundred and six of the Public Statutes, with a capital of not less than one hundred thousand nor more than five hundred thousand dollars, with the intention of forming a corporation for the purpose of buying and slaughtering swine and of melting and rendering and pork-packing, upon complying with the provisions of section twenty-one of said chapter shall be and remain a corporation, with all the powers, rights, and privileges, and subject to all the duties, limitations, and restrictions, contained in said chapter, except as hereinafter provided.

Corporations may be formed for buying and slaughtering swine, etc.
Public Statutes, c. 107, § 1.

98. Such corporation may take and hold by purchase or otherwise such parcel of land, not exceeding one hundred acres in extent, and situated in such place, as the state board of health, lunacy, and charity may determine to be suitable for said business; and shall, within sixty days from the time of taking any land otherwise than by purchase, cause to be signed by its president and filed in the registry of deeds for the county or district wherein said lands lie a description thereof as certain as is required in a common conveyance of lands and a statement of the purpose for

may take land, with approval of state board of health, etc.; to file a description in registry of deeds.
Public Statutes, c. 107, § 2.

which the lands are taken ; but no land shall be so taken without the approval in writing of the mayor and aldermen of the city or of the selectmen of the town in which it is situated.

Liability for
damages.
Trial by jury.
Public Statutes,
c. 107, § 3.

99. Such corporation shall be liable to pay all damages sustained by any persons in their property by the taking of any land for the purposes of this chapter. A person sustaining damages as aforesaid, and not agreeing upon the sum to be paid therefor, may apply by petition for the assessment of his damages, at any time within one year from the taking of said land, to the superior court in the county in which said land is situate ; such petition may be filed in the clerk's office of said court in vacation or in term time, and the clerk shall thereupon issue a summons to the corporation, returnable, if issued in vacation, to the then next term of the said court, held fourteen days at least after the issuing of said summons, and, if in term time, returnable on such day as the court shall order, to appear and answer to the said petition ; the said summons shall be served fourteen days at least before the return day thereof by leaving a copy thereof with the clerk of the corporation, and upon the return of said summons, duly served, the said petition shall stand as a cause in said court ; and upon said petition all questions of fact relating to the damages sustained by the petitioner shall be heard and determined, and the amount of such damages shall be assessed by a jury, unless the parties in writing waive their right to a jury, and agree that the same shall be determined by the court ; and the verdict of said jury, being accepted and recorded by the court, or the award of the court if jury trial is waived, shall be final and conclusive, and judgment shall be rendered and execution issued thereon ; and costs shall be recovered by the petitioner if the amount of said judgment exceeds the amount offered him for his damage before the filing of said petition, otherwise the corporation shall recover its costs.

To build suitable
buildings ;
regulations by
state board.
Public Statutes,
c. 107, § 4.

100. Such corporation shall proceed to build upon such land suitable buildings for the slaughtering of swine and for melting and rendering, and all necessary stables and out-buildings. No such building shall be erected until the plans thereof, with all details of construction, have been submitted to and approved by said state board, or some person designated by it to examine them. The corporation shall carry on all its business in accordance with such regulations as said state board shall, from time to time, establish and furnish in writing to the clerk of the corporation ; and for each violation of said regulations, it shall forfeit not less than twenty nor more than five hundred dollars.

Such corpora-
tion may carry
on slaughtering
business.

101. Subject to the foregoing provisions, such corporation may manufacture and sell any of the usual products of said slaughter-

ing and melting and rendering business, or may lease or permit other persons to use their buildings or parts thereof, on such terms as may be agreed upon. Each member of the corporation may slaughter swine on said premises, subject to such regulations and tariff of prices as the corporation may by vote at any regular meeting establish, and to the regulations of the said state board. A person engaged in business on the premises of such corporation, who violates any regulation of said state board, shall forfeit not less than twenty nor more than five hundred dollars.

Each member may slaughter on premises. Public Statutes, c. 107, § 5.

INSPECTION AND SALE OF PROVISIONS AND ANIMALS INTENDED FOR SLAUGHTER.

102. The mayor and aldermen of cities and the selectmen of towns may annually appoint one or more persons to be inspectors of provisions and of animals intended for slaughter. Such inspectors shall be sworn faithfully to discharge the duties of their office, and shall receive such compensation as the city council or the selectmen shall determine.

Appointment of inspectors of provisions. Public Statutes, c. 58, § 1.

103. Said inspectors may inspect all animals intended for slaughter, and all meats, fish, vegetables, produce, fruits, and provisions of all kinds, found in said cities or towns or exposed for sale or kept with intent to sell therein; and may for this purpose enter into all buildings or enclosures where said animals, meats, fish, vegetables, produce, fruits, or provisions are kept, stored, or exposed for slaughter or sale. When such animals, meat, fish, vegetables, produce, fruit, or provisions are found on such inspection to be tainted, diseased, corrupted, decayed, or unwholesome from any cause, said inspectors shall seize the same, and cause them or it to be destroyed or disposed of otherwise than for food; but if, at the time of the seizure, the owner of the property seized notifies in writing the inspector seizing the same of his desire to appeal to the board of health, said inspector shall cause said animals, meat, fish, vegetables, produce, fruit, or provisions to be inspected by said board of health, or by a committee thereof consisting of not less than two members; and if said board or committee find the same to be tainted, diseased, corrupted, or unwholesome, they shall order the same to be destroyed or disposed of otherwise than for food. If said board or committee do not so find, they shall order said animals, meat, fish, vegetables, produce, fruit, or provisions to be forthwith returned to the owner thereof. All moneys received by said inspectors or board of health for property disposed of as aforesaid shall, after deducting all expenses incurred by reason of such seizure, be paid to the owner of such property.

Duties and powers of inspectors. Public Statutes, c. 58, § 2.

Duties and powers of inspectors relative to veal.
Public Statutes, c. 58, § 3.

104. Said inspectors may inspect all veal found in said cities or towns, or offered or exposed for sale or kept with intent to sell therein, and if said veal is, in the judgment of the inspector, that of a calf killed under four weeks old, he shall seize the same and cause it to be destroyed or disposed of as provided in the preceding section, subject, however, to the provisions therein contained concerning appeal and the disposal of moneys.

Search warrants for unwholesome food, etc.
Public Statutes, c. 58, § 4.

105. When complaint is made on oath to any police, district, or municipal court, or to a magistrate authorized to issue warrants in criminal cases, that the complainant believes that any diseased animals, or any tainted, diseased, corrupted, decayed, or unwholesome meat, fish, vegetables, produce, fruit, or provisions of any kind, or any veal of a calf killed under four weeks old, are kept or concealed in a particular house or place with the intent to kill, sell, or offer the same for sale for food, the court or magistrate, if satisfied there is reasonable cause for such belief, shall issue a warrant to search for such animals or articles, and all such warrants shall be directed and executed as provided in section three of chapter two hundred and twelve of the public statutes. If, upon hearing, said court or magistrate determines that said animals or articles or any of them were kept or concealed for the purposes aforesaid, the same shall be destroyed or disposed of by the inspector, or by any officer designated by the court or magistrate according to the preceding provisions; if the court or magistrate does not so determine, said animals or articles shall be returned to the owner.

Penalty for knowingly selling, etc., unwholesome food.
Public Statutes, c. 58, § 5.

106. Whoever knowingly sells, or offers or exposes for sale, or has in his possession with intent to sell for food, any diseased animal, or any tainted, diseased, corrupted, decayed, or unwholesome meat, fish, vegetables, produce, fruit, or provisions of any kind whatever, shall be punished by imprisonment in jail for not more than sixty days, or by fine of not more than one hundred dollars.

Name and place of business of person convicted to be published.
Public Statutes, c. 58, § 6.

107. The place where property condemned under this chapter is found, and the name of every person in whose possession it is found, and of every person convicted of an offence under the preceding section, shall be published in two newspapers published in the county in which the property was found or the conviction took place.

This chapter not to be in force unless accepted.
Public Statutes, c. 58, § 7.

108. The provisions of this chapter shall not be in force in any city or town unless they are adopted by the city council of such city or by the inhabitants of such town, or unless the provisions of chapter one hundred and eighty of the statutes of the year eighteen hundred and seventy-six have been already so adopted.

OFFENCES AGAINST THE PUBLIC HEALTH.

109. Whoever knowingly sells any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding two hundred dollars.

Selling corrupt or unwholesome provisions without notice. Public Statutes, c. 208, § 1.

The gist of the offence under this section consists in the guilty knowledge or evil intent of a party in selling what he knows to be unfit for food. The sale, of itself, is not made criminal; but it is the sale coupled with the knowledge of the diseased state of the thing sold which constitutes the offence.

Commonwealth v. Boynton, 12 Cush. 499.

110. Whoever kills or causes to be killed, for the purpose of sale, any calf less than four weeks old, or knowingly sells, or has in his possession with intent to sell, the meat of any calf killed when less than four weeks old, shall be punished by imprisonment in the jail or house of correction not exceeding six months, or by fine not exceeding two hundred dollars, or by both such imprisonment and fine; and all such meat exposed for sale, or kept with intent to make sale thereof, may be seized and destroyed by any board of health or health officer, or by any sheriff, deputy-sheriff, constable, or police officer.

Killing for sale, or selling, calf less than four weeks old. Public Statutes, c. 208, § 2.

Where a party is charged with an offence of "killing or causing to be killed, for the purpose of sale, any calf less than four weeks old," it is not necessary to allege in the indictment, or prove, that he knew the calf to be less than four weeks old. The defendant is bound to know the facts and obey the law at his peril.

Under the next clause of this section, the offence is not the killing of the calf, but "*knowingly*" selling, or having in possession with intent to sell, the meat of a calf killed when less than four weeks old; and this language makes the defendant's knowledge essential to be alleged and proved.

The legislature saw fit to make the man who kills, or causes to be killed, a calf for the purpose of sale, at all events punishable if the animal was less than four weeks old; but to punish the man who sells veal, only in case he knows it to have been killed when under four weeks old.

Commonwealth v. Raymond, 97 Mass. 567.

111. Whoever fraudulently adulterates, for the purpose of sale, bread or any other substance intended for food, with any substance injurious to health, or knowingly barter, gives away, sells, or has in possession with intent to sell, any substance intended for food which has been adulterated with any substance injurious to health, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding three hundred dollars; and the articles so adulterated shall be forfeited, and destroyed under the direction of the court.

Adulterating food. Public Statutes, c. 208, § 3.

See Acts of 1832, c. 263.

Adulterating
liquor used for
drink with In-
dian cockle, etc.
Public Statutes,
c. 208, § 4.

112. Whoever adulterates, for the purpose of sale, any liquor used or intended for drink with Indian cockle, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, Brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison not exceeding three years; and the articles so adulterated shall be forfeited.

drugs or
medicines.
Public Statutes,
c. 208, § 5.

113. Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars; and such adulterated drugs and medicines shall be forfeited, and destroyed under the direction of the court.

Persons selling
certain poisons
to keep record,
etc.
Purchasers who
give false name,
etc.
Public Statutes,
c. 208, § 6.

114. Whoever sells arsenic, strychnine, corrosive sublimate, or prussic acid, without the written prescription of a physician, shall keep a record of the date of such sale, the name of the article, the amount thereof sold, and the name of the person or persons to whom delivered; and for each neglect shall forfeit a sum not exceeding fifty dollars. Whoever purchases deadly poisons as aforesaid, and gives a false or fictitious name to the vendor, shall be punished by fine not exceeding fifty dollars.

Corrupting
spring, etc., or
injuring aque-
duct.
Public Statutes,
c. 208, § 7.

115. Whoever wilfully or maliciously defiles, corrupts, or makes impure any spring, or other source of water, or reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year.

sources of do-
mestic water-
supply.
Public Statutes,
c. 208, § 8.

116. Whoever wilfully deposits excrement, or foul or decaying matter, in any water used for the purpose of domestic water-supply, or upon the shore thereof within five rods of the water, shall be punished by fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days; and a police officer or constable of a city or town in which such water is wholly or partly situated, acting within the limits of his city or town, and any executive officer or agent of a water board, board of water commissioners, or water company furnishing water for domestic purposes, acting upon the premises of such board or company and not more than five rods from the water, may without a warrant arrest any person found in the act of violating the provisions of this section, and detain him until a complaint can be made against him therefor. But this section shall not be so construed as to interfere with the sewage of a city, town, or public institution, or to pre-

vent boating, bathing, or fishing, or the enriching of land for agricultural purposes by the owner or occupant thereof.

POLLUTION OF RIVERS AND SOURCES OF WATER-SUPPLY.

117. No sewage, drainage, or refuse or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream hereinafter referred to, for domestic use, or render it injurious to health, and no human excrement, shall be discharged into any pond used as a source of water-supply by a city or town, or upon whose banks any filter basin so used is situated, or into any stream so used, or upon whose banks such filter basin is situated, within twenty miles above the point where such supply is taken, or into any feeders of such pond or stream within such twenty miles.

Sources of water-supply not to be polluted. Public Statutes, c. 80, § 96.

118. The preceding section shall not be construed to destroy or impair rights acquired by legislative grant prior to the first day of July in the year eighteen hundred and seventy-eight, or to destroy or impair prescriptive rights of drainage or discharge, to the extent to which they lawfully existed on that date; and nothing therein contained shall be construed to authorize the pollution of any waters in this commonwealth, in any manner contrary to law; nor shall it be applicable to the Merrimack or Connecticut Rivers, or to so much of the Concord River as lies within the limits of the city of Lowell.

Certain rights not to be impaired. Prohibition not applicable to certain rivers. Public Statutes, c. 80, § 97.

119. The state board shall have the general supervision of all streams and ponds used by a city or town as sources of water-supply, with reference to their purity, together with the waters feeding the same, except the Merrimack, Connecticut, and Concord Rivers; and shall examine the same from time to time, and inquire what pollutions exist and their causes. In case of a violation of any of the above provisions, the state board may appoint a time and place for hearing parties to be affected, and give due notice thereof to such parties, and after such a hearing, if in its judgment the public health requires it, may order any person to desist therefrom, and to remedy the pollution, or to cleanse or purify the polluting substances in such a manner and to such a degree that they shall be no longer deleterious to the public health, before being cast or allowed to flow into the waters thereby polluted. Upon the application of a city or town to the state board, alleging the pollution of its water-supply by the violation of any of the above provisions, the state board shall give notice and grant a hearing as aforesaid, and upon proof of such violation shall issue the order or orders already mentioned in this section.

State board to have supervision of sources of water-supply. Public Statutes, c. 80, § 98.

The action of the board may be either the result of its own observations and discoveries in the investigation called for by the statute, or it may be taken in consequence of an application by a city or town.

Pebbles v. City of Boston, 131 Mass.

Supreme judicial court may enforce orders of state board. Public Statutes, c. 80, § 99.
Orders to be served on parties. Public Statutes, c. 80, § 100.

120. The supreme judicial court, in term time or vacation, may issue an injunction to enforce such orders of the state board.

121. Such orders of the state board shall be served upon parties found to have violated any of the provisions hereof; and any party aggrieved thereby shall have the right of appeal to a jury, and be subject to the provisions of sections eighty-eight and ninety, chapter eighty, Public Statutes. During the pendency of the appeal, the pollution against which the order has issued shall not be continued contrary to the order of the state board.

It is clear from the above provision that the proceedings instituted by the person aggrieved by an order of the board must begin with an appeal from the order. They are not in the nature of independent original proceedings, but have their foundation in an appeal. The action of the board of health, whether taken on its own motion as the result of its voluntary investigations or pursuant to an application by a city or town, is judicial in its character; and an order made by the board, and not appealed from, has the binding force and effect of a judgment by a tribunal of competent jurisdiction. In the absence of any thing in the statutes to indicate that appeals from orders of the state board are to be taken in any other way than that which has become familiar in analogous cases before other tribunals, it must be held that they are to be taken in substantially the same way with such appeals, and that the right to appeal can be preserved only by informing the board in some definite and distinct manner that an appeal is taken. It cannot be supposed that the legislature intended that an appeal may be taken simply by making a petition to the superior court or one of its judges for a jury, while the tribunal appealed from is left in ignorance of the appeal, to proceed, if it sees fit, through the proper application to the supreme court, for the enforcement of its order thus appealed from. Accordingly, where the party appealing failed to enter his appeal with the board, the court held that he was not entitled to a jury.

Pebbles v. City of Boston, 131 Mass.

Penalty for driving horse on ice of pond used for water-supply, etc. Public Statutes, c. 80, § 101.

Exception to above. Public Statutes, c. 80, § 102.

Water boards, etc., to make triennial returns to state board. Public Statutes, c. 80, § 103.

122. Whoever drives a horse on the ice on a pond, the water of which is used for the purpose of domestic water-supply for a city or town, shall be punished by fine not exceeding fifty dollars, or imprisonment not exceeding thirty days.

123. The preceding section shall not apply to persons engaged in cutting or harvesting ice from such ponds, or in hauling logs, wood, or lumber.

124. Water boards, water commissioners, and water companies making use, as a source of water-supply, of any pond, stream, reservoir, or well, within the commonwealth, and distributing the waters thereof for public, domestic, and general uses, shall make returns to the state board on or before the first day of November

in every third year, beginning with the year eighteen hundred and eighty-two, of the facts hereinafter enumerated: *provided*, that the expense incurred by any such board, commissioners, or company shall not exceed fifty dollars. And the state board shall publish triennially, in its report to the legislature, the returns received, arranged by counties separately, and those from each county alphabetically.

125. Each of such water boards, commissioners, and companies shall state in the proper places on the blanks which the state board shall, on application, furnish for the purpose, —

Form of return.
Public Statutes,
c. 80, § 104.

1. Its name, charter, or other legal basis, and place of business.
2. The source or sources of its water-supply, and the name, if any, and location of each.
3. The superficial area of its water-surface, if pond, reservoir, or large well.
4. The area of water-shed supplying such source or sources.
5. The general geological and topographical character of the water-shed.
6. The estimated capacity of each such source by average daily flow.
7. The estimated capacity of each such source by minimum daily flow.
8. Whether the water-shed is also wholly or in part that of other ponds, streams, or reservoirs besides that used by the party making return; and if so, to what extent.
9. Whether or not the source employed by the party making return is used jointly by some other party for a water-source; and if so, by whom.
10. Whether there are other sources within ten miles, not already appropriated by law, that could be availed of in connection with the source or sources now enjoyed by the party making return; and if so, what, and their location, area, water-shed, and the means necessary to connect, with the distance from present source, and from territory to be supplied.
11. What danger of contamination the waters at present held are liable to.
12. Whether or not an analysis has been made of the water at present used, and the results of any such; by whom, and where.
13. Whether the waters at present used have been stocked with fish; if so, to what extent, by whom, and where.
14. What up to date has been the cost of the water-works in use, including rights and lands taken, and all damages paid; stating cost of water-rights separately, and to whom paid.
15. Whether the storage capacity of the present source can be increased, and at what probable cost, exclusive of damage by flowing, and at what damage to private parties or corporations
16. Whether any town, village, or city discharges its sewers or drains into the source used by the returning party, or their tributaries.
17. The population of the town, city, or village so discharging its sewers or drains into said source, and the character of its manufactures.
18. The apparent results of such sewage.
19. The average daily consumption for the year of the population supplied by the party making return.
20. The per centum used by families.
21. The average consumption per family per day.
22. The probable increase of demand, as near as can be estimated, for the next year.

23. The water-rates established.

24. The system of distribution, whether by gravity, stand-pipe, direct pumping, reservoir, or otherwise.

25. The condition of water debt and sinking-fund.

26. How the effluent water is now got rid of.

27. Into what stream or body of water it finally flows.

28. What protection against impurity of present source not now provided is desired.

29. What additional expense such protection would involve, and to whom.

State board to furnish blanks. Penalty for neglect to make returns. State board to prosecute. Public Statutes, c. 80, § 105.

126. The state board shall, on application from the parties who are required to make said returns, furnish the requisite blanks therefor; and any water board, commissioners, or company required to make said returns shall for every neglect or failure so to do forfeit fifty dollars to the use of the local board of health, or the proper officers acting as such, of the city or town in which such delinquent has its principal office. And the state board shall prosecute, by an action of tort in the name of the commonwealth, for the recovery of the penalty or forfeit herein imposed.

GENERAL PROVISION.

Chapter extends to cities. Public Statutes, c. 80, § 106.

127. The provisions extend to cities so far as the same are not inconsistent with their several charters or acts in amendment thereof.

CEMETERIES AND BURIALS.

Lots to be indivisible, but inheritable. Representative of, how designated. Public Statutes, c. 82, § 3.

128. Lots in cemeteries shall be held indivisible, and upon the decease of a proprietor, his heirs at law, or the devisees of such lot if devised, shall succeed to his privileges. If there is more than one heir or devisee, they shall within nine months from such decease designate in writing to the clerk of the corporation which of their number shall represent the lot; and on their failure so to designate, the board of trustees or directors of the corporation shall enter of record which of said heirs or devisees shall represent the lot while such failure continues.

Provisions of preceding section to apply to tombs in public cemeteries in cities, etc. Public Statutes, c. 82, § 4. Boards of health may make regulations. Public Statutes, c. 82, § 19.

129. The preceding section shall apply to all tombs in public cemeteries in cities, and the boards of health in cities shall exercise, in regard to such tombs, the powers granted by said section to trustees or directors of cemetery corporations.

130. Boards of health of cities and towns may make all regulations which they judge necessary concerning burial-grounds and interments within their respective limits; may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial; and may establish penalties not exceeding one hundred dollars for any breach of such regulations.

The powers given to boards of health are large and general to make regulations for the interment of the dead and respecting burying-grounds.

Withington v. Inhabitants of Harvard, 8 Cush. 68.

This section is not confined in its operation to acts done within the burial-grounds. The word "interments" properly includes and describes the removal of the bodies of deceased persons for the purpose of burial.

That this necessary duty shall be performed, especially when undertaken for hire, by suitable and trustworthy persons, and that the moving of dead bodies through the public streets shall be conducted with decency and safety, are obviously matters proper for municipal regulation, and which, as well as the mode of burial, may concern the public health to no slight extent.

Commonwealth v. Goodrich, 13 Allen, 546.

The board of health of a city may establish a regulation prohibiting any person, unless appointed an undertaker or otherwise authorized by the board of health, from moving from any house or other place in the city to any place of burial the body of any deceased person, and making it the duty of undertakers to attend funerals when required, and to collect and pay over the burial fees, and requiring, further, each undertaker to give bonds in the sum of two hundred dollars.

The refusal or neglect of a person appointed an undertaker to give the bond required by the regulation would justify the revocation of his appointment without any previous notice to him.

Commonwealth v. Goodrich, 13 Allen, 546.

131. Notice of such regulations shall be given by publishing the same in some newspaper of the city or town, or, if there is no such newspaper, by posting a copy in some public place therein; which shall be deemed legal notice to all persons.

Boards of health to give notice of regulations. Public Statutes, c. 82, § 20.

132. For every interment in violation of section eighteen, chapter eighty-two of the Public Statutes, in a city or town in which the notice prescribed in the preceding section has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

Penalty for interments in violation of section eighteen. Public Statutes, c. 82, § 21.

Sect. 18 of chap. 82, Public Statutes, provides that, "Except in the case of the erection or use of a tomb on private land, for the exclusive use of the family of the owner, no land other than that already so used or appropriated shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same is situated."

133. Before a tomb, burial-ground, or cemetery is closed by order of such board of health for a time longer than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if so many there are, of the proprietors of such burial-ground or cemetery, and notice shall also be published two successive weeks at least preceding such hearing, in two newspapers, if so many there are, published in the county.

Notice to be given before closing tombs, etc., by order of board. Public Statutes, c. 82, § 22.

134. The owner of a tomb aggrieved by the order of the board Appeal from

order of board.
Public Statutes,
c. 82, § 23.

of health closing a tomb, burial-ground, or cemetery, may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to the entry thereof. But the order of the board shall remain in force until a decision is had on the appeal.

to be tried by
jury. Costs.
Public Statutes,
c. 82, § 24.

135. Appeals shall be tried in regular course before a jury, and if the jury find that the tomb, burial-ground, or cemetery so closed was not a nuisance nor injurious to the public health at the time of the order, the court shall rescind such order so far as it affects such tomb, burial-ground, or cemetery, and execution for the costs of the appeal shall issue in favor of the appellant against the city or town in which the same was situated. But if the order is sustained, execution shall issue for double costs against the appellant in favor of the board of health for the use of the city or town.

Interments in
tombs in cities
may be for-
bidden, when
and how.
Public Statutes,
c. 82, § 25.

136. The city council of a city may, upon report of the board of health thereof that the public health requires it, and after public notice and hearing in the manner hereinafter provided, forbid future interment in any tomb within the city.

Tombs to be
specified; no-
tice; hearing.
Public Statutes,
c. 82, § 26.

137. Such report shall specify the tomb or tombs to which it refers, and name the owner thereof, if known; and thereupon the city clerk shall give notice to such owners as are known and reside within the commonwealth, and shall likewise publish a notice at least twice a week for four consecutive weeks in two or more newspapers published in the city, or in the county wherein said city is situate, reciting such report, and notifying all parties interested in the premises to appear before a joint committee of the city council at a time not less than two nor more than three months from the last publication of said notice, and show cause why such tomb or tombs should not be closed. After such hearing the city council may, upon a vote of both branches thereof and with the approval of the mayor, declare said tomb or tombs to be closed, and no interments shall thereafter be permitted therein.

Notice to repair
tombs may be
given, when and
how, etc.
Public Statutes,
c. 82, § 27.

138. When, in the judgment of the board of health of a city, a tomb therein needs repair, such board shall give notice thereof to the owner, or any one of the owners thereof, requiring said tomb to be put in a proper state of repair within three months from the date thereof; and if the owner of such tomb is unknown, the board may publish notice in the manner provided in the preceding section, requiring the owner to repair such tomb within the time above mentioned; and if the owner does not so repair such tomb, then the board may enter upon the same and make the repairs needed, at the expense of the city. If the public health requires immediate action, the board may make the necessary repairs, the

cost of which shall be refunded upon demand by the owner of such tomb. If the city incurs any expense in regard to a tomb in the manner before specified, such tomb shall be held by said board, and no further use shall be made thereof until the owner pays such expense and interest thereon; and after twenty years' possession under this act for non-repairs, all interest and right of burial in such tomb shall vest in the city in which the same is situate.

139. Any person aggrieved by the action of the city council or board of health under the three preceding sections may appeal therefrom in the manner provided by sections twenty-three and twenty-four, chapter eighty-two, Public Statutes.

Appeal from orders under three preceding sections. Public Statutes, c. 82, § 28.

140. No human body shall be buried or removed from any city or town until a proper certificate has been given by the clerk or registrar to the undertaker, sexton, or other person performing the burial or removing the body. Such certificate shall state that the facts required by chapter thirty-two of the Public Statutes have been returned and recorded; and no clerk or registrar shall give such certificate or burial permit until the certificate of the cause of death has been obtained from the physician, if any, in attendance at the last sickness of the deceased and placed in the hands of said clerk or registrar; and in cities and towns where there are boards of health, the certificate of the cause of death shall also be approved by such board before a permit to bury is given by the registrar or clerk. Upon application, the chairman of the board of health, or any physician employed by any city or town for such purpose, shall sign the certificate of the cause of death to the best of his knowledge and belief, if there has been no physician in attendance. He shall also sign such certificate, upon application, in case of death by dangerous contagious disease, or in any other event when the certificate of the attending physician cannot for good and sufficient reasons be early enough obtained. In case of death by violence, the medical examiner attending shall furnish the requisite medical certificate. Any person violating the provisions of this section shall be punished by fine not exceeding twenty-five dollars.

Burial or removal of body not permitted until certificate has been given. Public Statutes, c. 32, § 5.

141. The boards of health of towns and the mayor and aldermen of cities shall, on or before the first day of July in each year, license a suitable number of undertakers to take charge of the funeral rites preliminary to the interment of a human body.

Undertakers to be licensed by board of health. Public Statutes, c. 32, § 6.

142. Whoever, not being authorized by the board of health, overseers of the poor, directors of a workhouse, or mayor and aldermen or selectmen of a city or town, or by the board of directors for public institutions or overseers of the poor of the city of

Violation of sepulture. Public Statutes, c. 207, § 47.

Boston, wilfully digs up, disinters, removes, or conveys away a human body or the remains thereof, or knowingly aids in such disinterment, removal, or conveying away, and whoever is accessory thereto either before or after the fact, shall be punished by imprisonment in the state prison or jail not exceeding three years or by fine not exceeding two thousand dollars.

The removal of a dead body is not an offence within the meaning of the above statute, unless it is removed with the intent to use it or dispose of it for the purpose of dissection.

Commonwealth v. Slack, 19 Pick. 306.

CONTAGIOUS DISEASES AMONG CATTLE.

Animals with contagious diseases to be isolated, etc.
Public Statutes, c. 90, § 1.

143. The mayor and aldermen of cities and the selectmen of towns, in case of the existence in this commonwealth of the disease called pleuro-pneumonia among cattle, or farcy or glanders among horses, or any other contagious or infectious disease among domestic animals, shall cause the animals in their respective cities and towns, which are infected, or which have been exposed to infection, to be secured or collected in some suitable place or places within their cities or towns, and kept isolated; and, when taken from the possession of their owners, one-fifth of the expense of their maintenance shall be paid by the city or town wherein the animal is kept, and four-fifths by the commonwealth; such isolation to continue so long as the existence of such disease or other circumstances may render it necessary.

may be killed
Public Statutes, c. 90, § 2.

144. The mayor and aldermen and selectmen respectively, when any such animal is adjudged by a veterinary surgeon or physician by them selected to be infected with any contagious disease, may in their discretion order such diseased animal to be forthwith killed and buried at the expense of such city or town.

their value to be appraised, and how paid.
Public Statutes, c. 90, § 3.

145. They may cause all such animals to be appraised by three competent and disinterested men under oath, at the value thereof at the time of the appraisement, and the amount of the appraisement shall be paid as provided above.

Animals may be kept isolated.
Public Statutes, c. 90, § 4.

146. They may, within their respective cities and towns, prohibit the departure of animals from any enclosure, or exclude animals therefrom.

Passage of animals through towns may be regulated.
Public Statutes, c. 90, § 5.

147. They may make regulations, in writing, to regulate or prohibit the passage from, to, or through their respective cities or towns, or from place to place within the same, of any cattle or other domestic animals, and may arrest and detain, at the cost of the owners thereof, all animals found passing in violation of such regulations, and may take all other necessary measures for the enforcement of such prohibition, and also for preventing the spread

of any disease among the animals to their respective cities and towns, and the immediate vicinity thereof.

148. Such regulations shall be recorded upon the records of their cities and towns respectively, and shall be published in such cities and towns in such manner as may be provided in such regulations.

Regulations to be recorded, etc. Public Statutes, c. 90, § 6.

149. They may cause every animal infected with any such disease, or which has been exposed thereto, to be forthwith branded upon the rump with the letter P; and no animal so branded shall be sold or disposed of except with the knowledge and consent of such mayor and aldermen and selectmen. A person who, without such knowledge and consent, sells or disposes of an animal so branded, or sells or disposes of an animal known to be affected with such disease, or to have been exposed thereto within one year previous to such sale or disposal, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Animals may be branded. Penalty for selling. Public Statutes, c. 90, § 7.

150. Any person disobeying the orders of the mayor and aldermen or selectmen, made in conformity with the preceding provisions, or driving or transporting any animals contrary to the regulations made, recorded, and published as aforesaid, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Penalty for violation of rules, etc. Public Statutes, c. 90, § 8.

151. Whoever knows or has reason to suspect the existence of any such disease among the animals in his possession or under his care shall forthwith give notice thereof to the mayor and aldermen of the city or selectmen of the town where such animals are kept, and for failure so to do shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Owners suspecting disease to give notice. Penalty. Public Statutes, c. 90, § 9.

152. A city or town whose officers neglect or refuse to carry into effect the preceding provisions shall forfeit a sum not exceeding five hundred dollars for each day's neglect.

Penalty on towns for neglect. Public Statutes, c. 90, § 10.

153. The mayor and aldermen of cities and selectmen of towns, when in their judgment it is necessary to carry into effect the purposes of this chapter, may, within their respective cities and towns, take and hold, for a term not exceeding one year, any land, without buildings other than barns thereon, upon which to enclose and isolate any animals; and they shall cause the damages sustained by the owner in consequence of such taking and holding to be appraised by the assessors of the city or town wherein the lands so taken are situated; and they shall further cause a description of such land, setting forth the boundaries thereof, and the area as nearly as may be estimated, together with said appraisement, to be entered on the records of the city or town. The amount of said appraisement shall be paid, as before provided, in such

Lands may be taken; damages; appeal. Public Statutes, c. 90, § 11.

sums and at such times as the mayor and aldermen or selectmen respectively may order. If the owner of land so taken is dissatisfied with said appraisement, he may by action of contract recover of the city or town wherein the lands lie a fair compensation for the damages sustained by him; but no costs shall be taxed unless the damages recovered in such action, exclusive of interest, exceed said appraisement. And the commonwealth shall reimburse to the city or town four-fifths of any sum recovered of it in any such action.

Cattle commissioners may be appointed.
Public Statutes, c. 90, § 12.

154. The governor, with the advice and consent of the council, may appoint a board of cattle commissioners of not more than three members, when in his judgment the public safety may require it, and may terminate their commissions when in his judgment the public safety may permit it. The compensation of such commissioners shall not exceed four dollars per day for actual service, in addition to their travelling expenses necessarily incurred.

Regulations by commissioners to supersede those by selectmen.
Public Statutes, c. 90, § 13.

155. When such commissioners make and publish any regulations concerning the extirpation, cure, or treatment of animals infected with or which have been exposed to any contagious disease, such regulations shall supersede those made by mayors and aldermen and selectmen; and mayors and aldermen and selectmen shall carry out and enforce all orders and directions of the commissioners to them directed.

Hospital may be established.
Public Statutes, c. 90, § 14.

156. Such commissioners shall have all the power and authority herein conferred upon mayors and aldermen and selectmen; and, in addition, may establish a hospital or quarantine, with proper accommodations, wherein any cattle selected by them may be detained and treated by veterinary surgeons or physicians. And for this purpose the commissioners may take any land and buildings in the manner before provided.

Selectmen to notify commissioners.
Public Statutes, c. 90, § 15.

157. Mayors and aldermen and selectmen, within twenty-four hours after they have notice that any domestic animals in their respective cities and towns are infected with or have been exposed to any such disease, shall give notice thereof in writing to the commissioners.

Commissioners may make regulations as to cattle.
Public Statutes, c. 90, § 16.

158. The commissioners may make all necessary regulations for the treatment, cure, and extirpation of such disease, and may direct mayors and aldermen and selectmen respectively to enforce and carry into effect all such regulations as may from time to time be made for that end; and any such officer who refuses or neglects to enforce and carry out any regulation of the commissioners shall be punished by fine not exceeding five hundred dollars for every such offence.

May cause infected animals to be killed.

159. The commissioners, when in their judgment the public good requires it, may cause to be killed and buried any domestic

animals which are infected with or have been exposed to such disease; and, except as provided in the following section, shall cause such animals to be appraised in the manner provided above, and the appraised value of such animals shall be paid, one-fifth by the cities or towns in which such animals were kept, and the remainder by the commonwealth.

Public Statutes,
c. 90, § 17.

160. In all cases of farcy or glanders, the commissioners, having condemned the animal infected therewith, shall cause such animal to be killed, without an appraisement, but may pay the owner an equitable sum for the killing and burial thereof.

Farcy and
glanders.
Public Statutes,
c. 90, § 18.

161. A person who fails to comply with a regulation made or an order given by the commissioners shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Penalty.
Public Statutes,
c. 90, § 19.

162. Prosecutions under the preceding section may be maintained in any county.

Prosecutions,
where main-
tained.
Public Statutes,
c. 90, § 20.
Appraisements.
Public Statutes,
c. 90, § 21.

163. All appraisements made shall be in writing and signed by the appraisers and certified by the mayors and aldermen or selectmen or commissioners respectively, to the governor and council and to the treasurers of the several cities and towns wherein the cattle appraised were kept.

164. The commissioners may examine under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination or danger of dissemination of diseases among domestic animals; and for this purpose shall have all the powers vested in justices of the peace to take depositions and to compel witnesses to attend and testify by chapter one hundred and sixty-nine of the Public Statutes. All costs and expenses incurred in procuring the attendance of such witnesses shall be allowed and paid to the commissioners from the treasury of the commonwealth, upon being certified to and approved by the governor and council.

Commissioners
may examine
persons.
Public Statutes,
c. 90, § 22.

165. Whenever animals exposed to contagious diseases are killed by order of the commissioners, and upon a post-mortem examination are found to have been entirely free from disease, the commissioners shall cause the same to be sold under their direction, first giving to the purchaser notice of the facts, and if the said purchaser or any other person shall sell said slaughtered animals or any part thereof, he shall in like manner give notice to the parties to whom such sales are made; and the proceeds of the sales made by order of the commissioners shall be applied in payment of the appraised value of said animals.

May sell animals
killed when not
diseased.
Public Statutes,
c. 90, § 23.

166. Whoever violates any of the provisions of the preceding section shall be punished by fine not exceeding one hundred dollars and the costs of prosecution.

Penalty.
Public Statutes,
c. 90, § 24.

Commissioners
to keep record
and make re-
port.
Public Statutes,
c. 90, § 25.

167. Cattle commissioners, now or hereafter appointed, shall keep a full record of their doings, and report the same to the legislature on or before the tenth day of January in each year, unless sooner required by the governor; and an abstract of the same shall be printed in the annual report of the state board of agriculture.

ADULTERATION OF FOOD AND DRUGS.

Adulterated
food and drugs
not to be sold,
etc.

168. No person shall, within this Commonwealth, manufacture for sale, offer for sale or sell any drug or article of food which is adulterated within the meaning of this act.

Construction
of the terms
"drug" and
"food."

169. The term "drug" as used in this act shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food" as used herein shall include all articles used for food or drink by man.

What shall be
deemed to be an
adulteration.

170. An article shall be deemed to be adulterated within the meaning of this act, —

(a.) In the case of drugs. — (1.) If, when sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality or purity laid down therein; (2.) If, when sold under or by a name not recognized in the United States Pharmacopœia but which is found in some other pharmacopœia, or other standard work on *materia medica*, it differs materially from the standard of strength, quality or purity laid down in such work; (3.) If its strength or purity falls below the professed standard under which it is sold:

(b.) In the case of food. — (1.) If any substance or substances have been mixed with it so as to reduce, or lower, or injuriously affect its quality or strength; (2.) If any inferior or cheaper substance or substances have been substituted wholly or in part for it; (3.) If any valuable constituent has been wholly or in part abstracted from it; (4.) If it is an imitation of, or is sold under the name of, another article; (5.) If it consists wholly or in part of a diseased, decomposed, putrid or rotten animal or vegetable substance, whether manufactured or not; or, in the case of milk, if it is the produce of a diseased animal; (6.) If it is colored, coated, polished or powdered, whereby damage is concealed, or if it is made to appear better or of greater value than it really is; (7.) If it contains any added poisonous ingredient, or any ingredient which may render it injurious to the health of a person consuming it.

State board of
health, etc., may
declare certain
articles to be
exempt.

171. The state board of health, lunacy and charity may from time to time declare certain articles or preparations to be exempt from the provisions of this act; and the provisions hereof shall

not apply to mixtures or compounds recognized as ordinary articles of food, provided that the same are not injurious to the health, and are distinctly labelled as mixtures or compounds.

172. The state board of health, lunacy and charity shall prepare and publish from time to time lists of the articles, mixtures or compounds declared to be exempt from the provisions of this act in accordance with the preceding section. The said board shall also from time to time fix the limits of variability permissible in any article of food, or any drug, or compound, the standard of which is not established by any national pharmacopœia.

To publish lists of articles, etc., exempted.

173. The state board of health, lunacy and charity shall take cognizance of the interests of the public health relating to the sale of drugs and food and the adulteration of the same, and shall make all necessary investigations and inquiries in reference thereto, and for these purposes may appoint inspectors, analysts and chemists, who shall be subject to its supervision and removal.

May appoint analysts, etc., to make investigations.

174. Within thirty days after the passage of this act the said board shall adopt such measures as it may deem necessary to facilitate the enforcement hereof, and shall prepare rules and regulations with regard to the proper methods of collecting and examining drugs and articles of food. Said board may expend annually an amount not exceeding three thousand dollars for the purpose of carrying out the provisions of this act.

To prepare rules, etc., for examining drugs, etc.

175. Every person offering or exposing for sale, or delivering to a purchaser, any drug or article of food included in the provisions of this act, shall furnish to any analyst or other officer or agent appointed hereunder, who shall apply to him for the purpose and shall tender him the value of the same, a sample sufficient for the purpose of the analysis of any such drug or article of food which is in his possession.

Samples to be furnished to analyst upon tender of value.

176. Whoever hinders, obstructs, or in any way interferes with any inspector, analyst, or other officer appointed hereunder in the performance of his duty, and whoever violates any of the provisions of this act, shall be punished by a fine not exceeding fifty dollars for the first offence and not exceeding one hundred dollars for each subsequent offence.

Penalties.

177. This act shall take effect at the expiration of ninety days after its passage.

When to take effect.

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